



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region IX
75 Hawthorne St
San Francisco, CA 94105

ENFORCEMENT AND COMPLIANCE
ASSURANCE DIVISION

VIA ELECTRONIC MAIL
RETURN RECEIPT REQUESTED

SEPTEMBER 2, 2020

IN THE MATTER OF: Speed Element Performance, LLC

1701 Rogers Ave, Suite 10

San Jose, CA 95112

devin@speedelement.com

sales@speedelement.com

ATTENTION: Devin Hui, President

Request for Information Under § 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency ("EPA") hereby requires Speed Element Performance, LLC ("Speed Element" or "you") to submit certain information as part of an EPA investigation to determine Speed Element's compliance with Section 203 of the Clean Air Act ("CAA"), 42 U.S.C. § 7522, and the applicable regulations at 40 C.F.R. Parts 85, 86, and 1068. Examples of vehicles regulated under these Parts include, but are not limited to, diesel trucks, and light-duty gasoline vehicles. Appendix A provides definitions, Appendix B provides instructions for your responses to this request, and Appendix C specifies the information that you must submit.

The EPA issues this Request for Information ("Information Request") under Section 208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a), the Administrator of the EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder. The Administrator has delegated this authority to the undersigned Manager of Region 9's Air Enforcement Office, Enforcement and Compliance Assurance Division.

You must submit responses to this Information Request to the EPA representative listed below within thirty (30) calendar days from the date you receive this letter. Please carefully review the instructions, definitions, and specific requests as you prepare your response. If you anticipate being unable to fully respond to the Information Request by this date, you must contact the EPA representative to request an extension. Any such request should be made as soon as possible after receipt of this Information Request and must include an explanation of why an

extension is necessary and include a proposed timeline for providing the requested information. The EPA will review your request and may extend the time in which your response must be provided to some or all of the questions.

At this time, EPA Region 9 is not accepting any hard-copy document deliveries. If possible, we ask you to provide you respond in electronic form via email at connolly.scott@epa.gov or a file transfer program (FTP). Upon request, EPA can provide a secure link to an FTP site in order to submit responses to this Information Request.

Failure to provide the requested information may result in the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. Pursuant to Sections 208 and 307 of the CAA, 42 U.S.C. §§ 7542(a)–(b), 7607(a), EPA may request additional information, inspections, or depositions. It is important that your responses be clear, accurate, organized, and complete. We will regard any information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes. We may use any information submitted in response to this Information Request in an administrative, civil, or criminal action.

You must submit all requested information under an authorized signature with the certification provided in Appendix E.

You may be entitled to assert a business confidentiality claim covering all or part of the information provided in response to this Information Request as specified in the Confidentiality of Business Information (“CBI”) regulations, 40 C.F.R. Part 2, Subpart B. However, no CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph, and sentence when identifying the information subject to your CBI claim. Appendix D of this Information Request specifies the assertion and substantiation requirements for business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

EPA acknowledges that the COVID-19 pandemic may be impacting your business. If that is the case, we will consider your specific circumstances in determining an appropriate timeline for responding to this request for information, while still ensuring that the Agency receives the information it needs to timely confirm your company’s compliance with the CAA.

Any questions concerning this Information Request should be directed to Scott Connolly at (415) 947-4141 or connolly.scott@epa.gov or have your attorney contact Denise Leong in the Office of Regional Counsel at (415) 972-3409 or Leong.Denise@epa.gov.

Roshni Brahmbhatt, Manager
Air Enforcement Office
Enforcement and Compliance Assurance Division
EPA Region 9 – San Francisco

Appendix A

Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined below or in the CAA, 42 U.S.C. §§ 7401 et seq., or the Motor Vehicle Regulations found at 40 C.F.R. Parts 85, 86, and 1068, in which case they shall have their meanings as defined therein.

1. The term “person” includes an individual, corporation, partnership, or association. *See* Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
2. The term “you,” “your,” and “Speed Element” means Speed Element Performance, LLC, and any affiliates, predecessors, successors, and assignees.
3. The term “emission related parts” means those parts installed for the specific purpose of controlling emissions, or those components, systems, or elements of design which must function properly to assure continued vehicle emission compliance, as defined in 40 C.F.R. § 85.2102.
4. The term “element of design” means any control system (e.g., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine, as defined in 40 C.F.R. §§ 86.094-2 and 86.1803-01
5. The term “electronic control module” or “ECM” means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions.
6. The term “engine management product” or “EM product” means any device or product capable of accessing, altering, or replacing the software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information stored within or used by an ECM. EM products include, but are not limited to, programmers, modules, tuners, ECM calibration tools, replacement ECMs, flash tools, or engine management products.
7. The term “engine tune,” “tune,” or “calibration” means any combination of software programming, calculations, computer logic, tables of information (e.g., fuel timing maps), coding, or other content or information, stored in any form, capable of affecting or controlling an ECM.
8. The term “product” includes any software code, software, hardware, program, calibration, engine tune, EM product, device, part, or component.
9. The term “exhaust product” means exhaust components designed for use downstream from the exhaust port of a motor vehicle engine, and include, but are not limited to, exhaust gas recirculation (“EGR”) block plates, EGR delete kits, exhaust replacement

pipes, and straight pipes. This term does not include ancillary exhaust components such as clamps, hangers, nuts, bolts, and gaskets that are not capable of impacting or replacing emission related parts.

10. The term “onboard diagnostics” or “OBD” means systems which monitor components’ emission-related systems, and assists repair technicians in diagnosing and fixing problems with those emission-related systems. If a problem is detected, an OBD system should record a Diagnostic Trouble Code (“DTC”), illuminate a Malfunction Indicator Light (“MIL”) or other warning lamp on the vehicle instrument panel, and/or provide information to the ECM which induces Engine Derate due to malfunctioning or missing emission-related systems.
11. The term “exhaust gas recirculation” or “EGR” means systems which redirect, usually by use of an EGR valve, a portion of engine exhaust back into the engine’s combustion chamber to cool and reduce peak combustion temperatures and pressures, thereby reducing the production of nitrogen oxides (“NO_x”). The EGR system may include an EGR cooler to cool the recirculated exhaust to further reduce the combustion temperature.
12. The term “DPF” refers to diesel particulate filters, which are exhaust aftertreatment devices that typically use a porous ceramic or cordierite substrate or metallic filter to physically trap particulate matter (“PM”) and remove it from the exhaust stream.
13. The term “SCR system” refers to the selective catalytic reduction system, which is an exhaust aftertreatment device designed to reduce NO_x emissions by injecting a liquid reagent through a catalyst.
14. The term “catalysts” means systems or devices which increase the rate of a chemical reaction but are not one of the original reactants or final products, *i.e.*, the catalyst is not consumed or altered in the reaction. The term “catalysts” includes emission control catalysts such as diesel oxidation catalysts (“DOCs”), NO_x adsorber catalysts (“NACs”), and three-way catalysts (“TWCs”).

Appendix B

Instructions for Responses

1. Please provide your response to this Information Request in electronic form via email or file transfer.
2. Provide copies of documents, not original documents.
3. Where documents or information necessary for a response is not in your possession, custody, or control, indicate in your response why such documents or information are not available or in your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.
4. Where you have previously submitted information to the EPA that is responsive to any of the Requests set forth in Appendix C, re-submit that information in accordance with these instructions (Appendix B). Identify the material that was previously provided, the date on which it was provided, how the information was provided (e.g., electronically, fax, mail), and the individual at the EPA to whom it was provided.
5. This Request for Information is a continuing request. You must promptly supplement your response to any Request in Appendix C in the event you learn that you possess responsive information not yet produced or if you gain possession, custody, or control of responsive information after responding to this Information Request.
6. You must maintain an unaltered and complete copy of your website as it exists at the time this Information Request is received for a period of two years. This includes all pages, graphical elements, and text displayed on the website. You must provide this information in readable electronic format to EPA within ten days upon request.

Appendix C

Information Request

Speed Element Performance, LLC (Speed Element) must submit the following information to the United States Environmental Protection Agency pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, regarding the installation or sale of parts and products.

1. Copies of invoices for all work performed by Speed Element from January 1, 2018, through the date of this Information Request, including work involving removal of emission related parts, installation of engine management (EM) components or the installation of any exhaust product.
2. Identify each EM product Speed Element sold during the period from January 1, 2018, through the date of this letter, in a formatted spreadsheet, and provide the:
 - a. Part Number, Item Code, or other unique identifier used by Speed Element;
 - b. Product name;
 - c. Product manufacturer (if different);
 - d. Identify the product's applications by vehicle type, make, model, and year;
 - e. Quantity Speed Element sold during the period January 1, 2018, through the date of this Information Request;
 - f. Average sale price;
 - g. Identify whether the product affects or changes fuel delivery rate, timing of mixtures, diagnostics, turbo boost, or other engine parameters or calibrations.
 - h. Describe how the product differs from the stock components it replaces or specifically changes the stock configuration.
 - i. Does the product permanently or temporarily change, affect, or bypass a motor vehicle's emission related parts, including but not limited to the EGR, DPF, SCR, catalyst, OBD, or any sensors, signals, or records related to these systems;
 - j. Indicate whether the product modifies, interferes, or overrides the vehicles' OBD system;
 - k. Indicate whether the product replaces or overwrites an ECM; and
 - l. Indicate whether, together with the addition, modification, or removal of a motor vehicle's parts, the product has the effect to permanently or temporarily change, affect, bypass, defeat, or render inoperative a motor vehicle emission control device or emission related part.
3. For each product identified in response to Request 1 which Speed Element sold during the period January 1, 2018, through the date of this Information Request, provide all sales information using a formatted spreadsheet. Speed Element may provide the requested information in a spreadsheet exported from an invoice management program such as QuickBooks, or similar software.
4. Identify each exhaust product sold during the period from January 1, 2018, through the date of this letter, and provide the:
 - a. Part Number, Item Code, or other unique identifier used by Speed Element;

- b. Product name;
 - c. Product manufacturer (if different);
 - d. Identify the product's applications by vehicle type, make, model, and year;
 - e. Quantity Speed Element sold during the period January 1, 2018, through the date of this Information Request;
 - f. Average sale price;
 - g. Indicate if you have advertised this product and provide electronic file names of each advertisement provided in response to Request No. 8.b (if applicable);
 - h. Describe how the product differs from the stock components it replaces or specifically changes the stock configuration.
 - i. Does the product permanently or temporarily change, affect, or bypass a motor vehicle's emission related parts, including but not limited to the EGR, DPF, SCR, Catalyst, OBD, or any sensors, signals, or records related to these systems; and
 - j. Indicate whether, together with the addition, modification, or removal of a motor vehicle's parts, the product has the effect to permanently or temporarily change, affect, bypass, defeat, or render inoperative a motor vehicle emission control device or emission related part.
5. For each product identified in response to Request 4 which Speed Element sold during the period January 1, 2018, through the date of this Information Request, provide all sales information using a formatted spreadsheet. Speed Element may provide the requested information in a spreadsheet exported from an invoice management program such as QuickBooks, or similar software.
 6. For each product identified in response to Requests 2 and 4:
 - a. provide copies of all advertisements for each product; and
 - b. provide all manuals (e.g., owner's and installation) in your possession.
 7. Provide a detailed, written description of Speed Element's business structure including ownership, corporate form, parent and/or subsidiary companies, and affiliated organizations.
 8. Provide the location of all warehouses or storage facilities where Speed Element stores products.
 9. Identify each person responsible for responding to this Information Request, including his or her title, and the Request(s) to which he or she responded.

Appendix D

Confidential Business Information

An entity may assert a business confidentiality claim covering all or part of the information provided in response to this Information Request for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, entities are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. If no such business confidentiality claim accompanies the response to this Information Request when it is received by EPA, then such information may be made available to the public without further notice. *See* 40 C.F.R. § 2.204(a)(3).

Pursuant to 40 C.F.R. § 2.301(h), the EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. To assist in its review and analysis, the EPA may disclose information provided in response to this and other information requests to an EPA contractor, the Eastern Research Group, under contract number 68HERH19C0004. *See* 84 Fed. Reg. 8859, 59-60 (Mar. 12, 2019).

To assert a business confidentiality claim, an entity must place on (or attach to) all information subject to the claim either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time it provides its response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be provided separately to facilitate identification and handling by the EPA. An entity should indicate whether confidential treatment is only required until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material claimed as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208(a)-(d) and 2.301. Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

Appendix E

Statement of Certification

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Information Request, issued pursuant to Section 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by _____ [corporate affiliation] to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____